

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

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BRIEF FOR APPELLEE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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for the District of Columbia Circuit

FILED JAN 19 1966

No. 19,782

Nathan J. Paulson
CLERK

DIANA KEARNY POWELL,

Appellant,

v.

NATIONAL SAVINGS AND TRUST COMPANY,

Appellee.

Appeal from a Final Judgment of the United States
District Court for the District of Columbia

ARTHUR P. DRURY

JOHN M. LYNHAM

JOHN E. POWELL

HENRY H. PAIGE

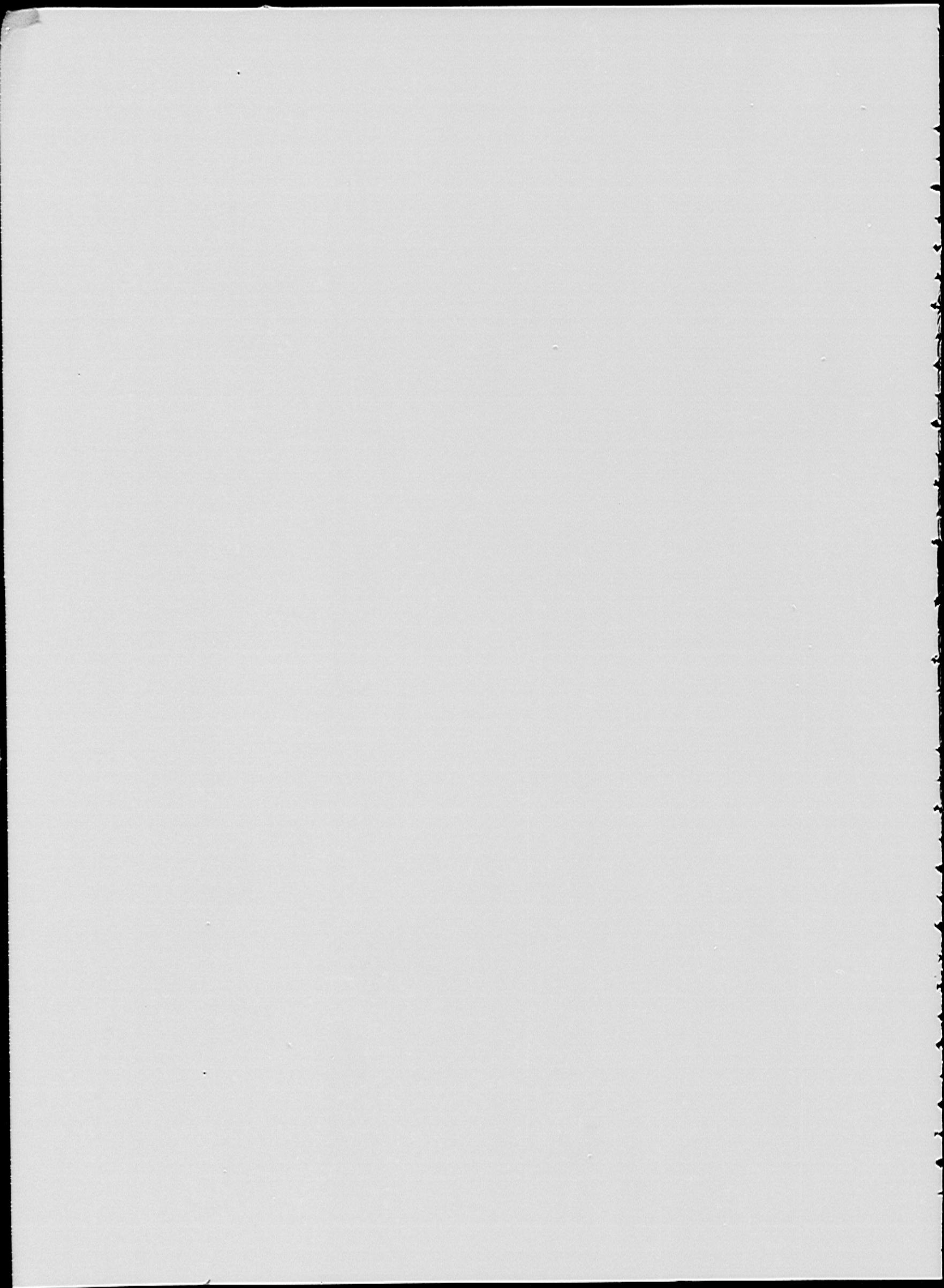
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COUNTERSTATEMENT OF QUESTION PRESENTED

In the opinion of the Appellee the question presented is whether the Court below was correct in denying Appellant's motion to set aside the Report of the Auditor, and for leave to file a third party complaint in the nature of *quo warranto*, when the matter complained of was the District Court's previous construction of a trust instrument adversely to Appellant's contentions, this Court's affirmation of that determination and the Supreme Court's denial of certiorari.



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DIANA KEARNY POWELL,

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Appeal from a Final Judgment of the United States
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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF CASE

Under date of July 27, 1965, the Auditor filed his report on Appellee's Eighth, Ninth and Tenth Accounts and Reports as Successor Trustee of the trust created under the will of Diana Kearny Powell, deceased. Appellant filed a motion on August 4, 1965 to set aside the

Auditor's Report, and for leave to file a third party complaint against Appellee (JA 16-19), the thrust of the motion being that she was entitled to and was unlawfully being deprived of the whole of the remainder of the trust estate. Appellee opposed the motion on the ground that Appellant's contentions were *res judicata*. The motion was heard and denied on September 24, 1965 (JA 19-20), and the order in accordance with the Court's ruling was entered on September 29, 1965 (JA 20-21). This appeal followed.

ARGUMENT

This appeal marks the sixth time that Appellant has brought before this Court her contentions with respect to how the remainder of the trust estate created under the will of her deceased grandmother, Diana Kearny Powell, should be distributed and her claims of malfeasance on the part of Appellee. As long ago as October 5, 1960, the District Court construed the trust and directed Appellee to distribute a portion of the corpus to Appellant, rather than the whole to which she claimed to be entitled. She since has attacked the decision directly and collaterally, and this is but another effort on her part to circumvent a final judicial determination. The questions raised by Appellant are no longer open for review. *Powell v. National Savings and Trust Company*, 111 U.S. App. D.C. 290, 296 F. 2d 412, cert. denied, 368 U.S. 946 (1961), rehearing denied, 368 U.S. 1005 (1962); *Powell v. National Savings and Trust Company*, 114 U.S. App. D.C. 269, 314 F. 2d 274 (1963); *Powell v. National Savings and Trust Company*, No. 17,658, decided November 19, 1963, rehearing en banc denied January 15, 1964; *Powell v. National Savings and Trust Company*, No. 18,292, decided May 19, 1964, cert. denied, 379 U.S. 920 (1964), rehearing denied, 379 U.S. 984 (1965); *Powell v. Paige, et al.*, ____ U.S. App. D.C. ____ , ____ F. 2d ____ , No. 19,547, decided December 9, 1965.

CONCLUSION

It is respectfully submitted that this Court should either affirm the order of the District Court or dismiss the appeal as frivolous.

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